

Interest Groups and Constitutional Evolution

The previous chapter heavily emphasized the normative goal of designing constitutional rules that enable a government to have the ability to protect people's rights, but that is constrained from having the ability to violate people's rights. That approach considers how the process of designing constitutional rules might ideally work, but this chapter focuses on the way that political institutions evolve in response to the incentives that face those who interact with them. The ideas in the previous chapter are relevant, because it is often the case that substantial uncertainty accompanies any major overhaul of constitutional rules, providing an incentive for all individuals to favor rules that work to everybody's advantage. Consider, for examples, the establishment of the United States government after the American Revolution, or the creation of new governments in Japan and Germany following World War II. The old power structures were destroyed, and new ones were designed to replace them. The old networks and connections that governed previously were replaced, but as new institutions were designed, the uncertainty about who would hold the power of government, and how that power would be distributed meant that designers of the new institutions had incentives to see that political institutions would work to their advantage, regardless of the degree to which they were able to hold political power. With some oversimplification, we can view a two-stage process in which a new set of constitutional rules is designed under uncertainty, after which those rules evolve over time.

The first stage can be viewed as depicted in Chapter 12, with citizens agreeing to rules that are intended to be durable, and effectively behind a veil of ignorance where they are uncertain about the postconstitutional decisions that will be made under those constitutional rules. They have an incentive to make the rules impartial, to design a set of rules that protects everybody's rights, and that constrains the government so that it will be the protector of individual rights, but not a violator of individual rights. The post-World War II constitutions of Japan and Germany are especially interesting because their terms were dictated by those who won the war, rather than by

the Japanese and Germans themselves. Presuming that the designers of those constitutions wanted the rules to be as beneficial to those who would be governed by them as possible, the veil of ignorance model seems to fit there better than anywhere, because those who designed the rules would have very little in the way of personal interests regarding the postconstitutional decisions that would be made under them.

Government as a Stationary Bandit

In many cases, the model of constitutional rules being the product of agreement does not conform with reality. Often, governments are formed when one group of people conquers another and imposes its own rules on the people it has conquered. In post-World War II Germany and Japan, the designers seemed to be benevolent, but this is not always the case. Sometimes the intention of the conquerors is to design rules for the benefit of the conquerors rather than the conquered. Even the founding of the United States was the result of a military victory in which some people won out over others, allowing the victors to design the new rules.

Even when some people conquer and rule over others by force, the rulers have some incentives to impose constitutional rules that have substantial similarities to those that might be adopted voluntarily behind a veil of ignorance, because the rulers benefit from rules that make those they rule as productive as possible. More productive citizens generate more income that can be taxed by those who rule them.

Consider a roving bandit who roams from village to village, looting village residents. The roving bandit will take as much as he can before moving on to his next target. The bandit gets no advantage from leaving anything behind for the people who are plundered. The roving bandit must continually be on the move to find new targets, and resources are wasted on both sides as the bandit uses force to try to plunder the villagers and the villagers use force to try to repel the bandit. An alternative strategy would be for the bandit to occupy a location permanently, becoming a stationary bandit, periodically taking resources from those in the village. The

incentives are different for the stationary bandit, who would then have an incentive to cultivate the productivity of those he plunders, so there is more to plunder in the future.

Because the income of the stationary bandit comes from the productivity of those under him, the stationary bandit also has an incentive to protect them, both from opportunistic individuals in their own village and from outside predators. It is easy to imagine that a productive village would attract the attention of other predators who might be inclined to attack and plunder the village. So, the stationary bandit has an incentive to protect those who provide the stationary bandit's income.

It is easier to gain compliance from people when they agree to comply than when they are forced, so the stationary bandit has an incentive to get those under him to view his activities as legitimate: to present himself as a benevolent leader rather than a bandit. If he can convince citizens to recognize him as a king, and can convince them that it is to their advantage to pay him taxes in exchange for the protection he offers, it will be less costly for him to maintain a system in which citizens view the transfer of resources to him as legitimate taxation rather than plunder. The stationary bandit has an incentive to establish institutions such that citizens view it as advantageous to transfer resources to the ruler in exchange for protection.

The ruler also has an incentive to produce public goods if they enhance the productivity of citizens, because greater productivity means there is more to tax. And, the ruler has an incentive to place constitutional limits on his power to tax, to maintain incentives for citizens to be productive. If the ruler is perceived as a threat to confiscate everything the citizens have, they will not have much of an incentive to accumulate wealth. Establishing a council of citizens who must approve any tax increases could work to the mutual advantage of both the ruler and the citizens, making citizens more productive and ultimately tendering more tax revenue from their increased productivity.

If a stationary bandit envisions remaining in place for a long time, he will have an incentive to establish institutions that would be very similar to what citizens might agree to from behind a veil of ignorance. Thus, when thinking about optimal constitutional rules, there may not be that much

difference between the types of rules people would voluntarily adopt and those which might be imposed by a conquering group.

This public choice approach to constitutional rules offers an interesting contrast to the public goods theory that economists often use to explain government production. For example, public goods theory suggests that government produces national defense because it is a public good that would be underprovided in the market. This public choice approach says that government produces national defense because it benefits those in government by protecting the productivity of those who pay taxes to government. Public goods theory depicts government as a benevolent provider of a good that selfish private sector will underprovide to themselves. Are people in government really more benevolent than people in the private sector? This public choice approach depicts the production of national defense as a mutually advantageous exchange in which everyone acts to further their own interests, so is more consistent with the assumptions economists typically assume about individual behavior.

Interest Group Activity Over Time

Once constitutional rules are in place, interest groups within the political power structure tend to gain increasing influence over time. Individuals are able to make personal connections that solidify the power of interest groups, and they are able to modify formal institutions in ways that give them more power. Organized labor can convince those in government to pass laws providing worker benefits and protections for union activity, and businesses are able to push through regulatory changes that provide them with protection from competitors, subsidies, and tax advantages. Those institutional changes are politically difficult to reverse once they are put into place.

One factor that leads toward increasing interest group influence over time is that relationships between interest groups and policy makers become stronger. Consider a political system in which there are very weak relationships between interests and policy makers. Examples might be Japan and Germany after World War II. The war wiped out the old political power structures and

interest groups, so there were no well-established links in the new governments. Situations like this are as close to designing constitutional rules from behind a veil of ignorance as could happen in the real world. Over time, interests approach policy makers to try to establish policies that work to their benefit, in exchange for political support that the interests can offer. Relationships become established between the interests and policy makers for their mutual benefit, and those relationships tend to become stronger over time because of the mutual benefits. When policies are put into place and laws are passed to support the interests, that enhances the power of the interest groups, which puts them in a position of being able to pursue even more benefits through the political system. As laws are passed and policies are implemented to benefit narrow interests, those laws and policies become a part of the status quo, shifting the balance of power toward those favored interests.

Over time, government increasingly implements policies that benefit special interests rather than the general interest. The result is that entrepreneurial individuals increasingly view that the way for them to profit is to seek subsidies, tax breaks, regulatory advantages, and other special interest benefits through government, rather than producing goods and services in the private market. As individuals increasingly engage in interest group politics rather than productive activity, economic growth suffers and nations sink into decline.

The process has a self-reinforcing aspect to it because when policies are implemented to provide benefits to special interests, additional individuals become beneficiaries of the policies, and so work to maintain and increase them. If a new agency is created or an old one expanded to implement a special interest policy, the people who are hired work in that agency then become additional supporters, making the political support for the new policy stronger. As time goes on, special interests become more firmly entrenched, and there is a tendency for policies to increasingly support special interest policies at the expense of the general public interest.

This tendency can be reversed by upheavals that destroy the networks of interest groups and political relationships, and war is one example. It also might be slowed by constitutional constraints on government power.

Enforcing Constitutional Constraints

While there is a tendency to think of democratic government as implanting the preferences of the people, or carrying out the will of the majority, all modern democracies have constitutional constraints on the allowable activities of government. Elections serve to determine which people hold political power, and while they do have a substantial amount of discretion regarding public policy, they can only do what constitutional rules allow. Constitutional constraints on government action can prevent governments from enacting some policies that would favor special interests over the general public. By limiting the powers of government, constitutional constraints prevent those who have political power from enacting some policies they might otherwise choose. For constitutional constraints to be effective, there must be some mechanism that forces those in government to abide by them. Ultimately, that mechanism is the requirement that those who make public policy decisions need the support of others to do so.

In part, policy makers need the support of the general public. In the extreme, a dissatisfied population could initiate a revolution to replace their political leaders. In democratic governments, replacing political leaders may be accomplished by elections, which are less costly than revolutions, if the institutional structure allows popular candidates to be viable contenders. Policy makers need a certain degree of popular support to remain in power. Even in dictatorships, the dictator needs the support of others, typically including the military, to remain in power and make policy decisions. So, widespread opposition to political leaders can terminate their hold on their positions, creating a constraint that enforces constitutional rules.

The division of political power is at least as significant a constraint on the exercise of power as popular approval. Constitutional constraints create a system of checks and balances that force political leaders to abide by constitutional rules. The division of political power to create a system of checks and balances is a fundamental part of governmental organization. As the English government evolved, the king wanted resources from the people, largely to fight wars, and citizens were reluctant to provide resources to the king without some say in their disposition, and

some guarantee that the amount the king could take from the people would be limited. The result was the creation of a council of advisors to the crown, which became the House of Lords. Citizens also wanted their voices heard, and to gain the cooperation of the general population, the House of Commons was created. The British parliament evolved not because the crown wanted constraints on its activities, but because it had to agree to those constraints to remain in power and accomplish its broader goals. Through a process of bargaining, the crown agreed to give greater powers to parliament in exchange for their support. The British system of checks and balances inspired the American Founders to design a system of checks and balances into the US Constitution.

The US system divides government into legislative, executive, and judicial functions with the idea that those three branches of government check and balance the powers of each other. Legislation from the legislative branch is subject to presidential veto, and actions of both the legislative and executive branches can be overturned by the judicial branch, if lawsuits are brought against them. The judicial branch can act only on cases brought before it, so it reviews public policies but cannot initiate them.

Regardless of the specific system, which varies from country to country, how well it works depends upon how evenly power is balanced among those who have political power. In the United States it is common to hear accusations that both the president and the courts are creating new law, a power that is reserved for the legislature, and to hear the legislature accused of passing legislation that violates the Constitution. It appears that in Vladimir Putin's Russia, Putin has effectively taken control of government, eliminating institutional checks on his power, and Adolf Hitler was democratically elected but managed to eliminate constitutional constraints on his actions and become an unconstrained dictator. Regardless of the details of these specific cases, including whether they ring true, the point is that a constitutional system that divides political power and creates checks and balances on its ability to stretch its constitutional limits to favor special interests over the general public.

Conclusion

Constitutional economics has a heavy normative component, which was discussed in Chapter 12. How can constitutional rules be devised so that they give government sufficient power to protect individual rights, but constrain government so it does not have the power to violate individual rights? Aside from this normative orientation, constitutional rules can also be analyzed to see how they actually are created and how they tend to evolve over time. This chapter has shown that there is a tendency for policies to evolve so that they increasingly favor narrow special interests over the general public interest, and that democratic control over government is often insufficient to counter this tendency. Majorities can take advantage of minorities just as readily as dictators, and often well-organized minorities can impose costs on the general public. Constitutional constraints that limit government's power are necessary to limit interest group politics.

Even with rules in place, without a division of political power, those who hold power will find formal rules to offer little constraint against their using the power of government for their own ends. An effective system of checks and balances, while difficult to design and maintain, can enable some who hold power to check the power of others. A system of checks and balances has evolved over centuries, producing divisions that assign executive, legislative, and judicial power to different groups. How much power each group has is the product of a political bargaining process that continues to evolve. In Britain, the crown has seen its power continually diminish as it was transferred to parliament; in the United States, the power of the presidency has increased relative to Congress. Analyzing this bargaining process is an exercise in positive constitutional economics, evaluating how constitutional rules have evolved independent of how, ideally, they should evolve.

Notes to Chapter 13

Mancur Olson, *The Rise and Decline of Nations* (New Haven: Yale University Press, 1982), offers a compelling explanation of how interest groups affect constitutional rules. The contrast

between roving and stationary bandits is discussed in Mancur Olson, *Power and Prosperity: Outgrowing Communist and Capitalist Dictatorships* (New York: Basic Books, 2000). The public goods model of national defense is reconsidered in Randall G. Holcombe, "Why Does Government Produce National Defense?" *Public Choice* 137, nos. 1/2 (October 2008), pp. 11-19. William J. Baumol, "Entrepreneurship: Productive, Unproductive, and Destructive," *Journal of Political Economy* 98, no. 5, Part 1 (October 1990), pp. 893-921, explains how institutional incentives lead entrepreneurial individuals toward seeking special interest benefits through government rather than engaging in productive private sector activity. Roger Congleton, *Perfecting Parliament* (Cambridge: Cambridge University Press, 2010) gives a historical account of the evolution of constitutional rules in Europe, and Randall G. Holcombe, *From Liberty to Democracy: The Transformation of American Government* (Ann Arbor: University of Michigan Press, 2002), discusses the effects of interests on the American constitution. Douglass C. North, John Joseph Wallis, and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: Cambridge University Press, 2009), give a theoretical framework for understanding constitutional evolution.

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